IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
FILED
MAR 25 2010
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

UNITED STATES OF AMERICA,

v.

SHANE C. BUCZEK,

Defendant.

08-CR-54-S
09-CR-141S

PLEA AGREEMENT

The defendant, **SHANE C. BUCZEK**, and the United States Attorney for the Western District of New York (hereinafter "the government"), hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to plead guilty to the following charges:

a. Count 3 of the Indictment in 08-CR-54-S, which charges a violation of Title 18, United States Code, Section 1028(a)(4) (possession of a false identification document), for which the maximum possible sentence is a term of imprisonment of 1 year, a fine of $100,000, or both, a mandatory $100 special assessment and a term of supervised release of up to 1 year; and

b. Count 1 of the Indictment in 09-CR-141-S, which charges a violation of Title 18, United States Code, Section 401(3) (contempt of court), for which the maximum possible sentence shall be, at the discretion of the Court, a term of imprisonment, a fine, or both, a mandatory $100 special assessment and a term of supervised release.

2. The defendant understands that the penalties set forth in Paragraph 1 are the maximum penalties that can be imposed by the Court at sentencing.

3. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 1 year, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum penalties set forth in paragraph 1 of this agreement.

II. ELEMENTS AND FACTUAL BASIS

4. The defendant understands the nature of the offenses set forth in paragraph 1 of this agreement and understands that if the cases proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crimes:

As to Count 3 of the Indictment in 08-CR-54-S, charging a violation of Title 18, United States Code, Section 1028(a)(4) (possession of a false identification document), that the defendant knowingly possessed a false identification document; and that the defendant intended to use that document to defraud the United States.

As to Count 1 of the Indictment in 09-CR-141-S, charging a violation of Title 18, United States Code, Section 401(3), that the defendant disobeyed and resisted a lawful order of a Court of the United States; and that defendant acted willfully and knowingly.

FACTUAL BASIS

5. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

As to Count 3 of the Indictment in 08-CR-54-S, charging a violation of Title 18, United States Code, Section 1028(a)(4) (possession of a false identification document): On or about December 26, 2006, in the Western District of New York, the defendant Shane C. Buczek, knowingly possessed what purported to be a "United States of America Head of State-diplomat card," a false identification document, as defined in Title 18, United States Code, Section 1028(d)(4), and intended to use said false identification document to attempt to obtain a United States passport from the United States Department of State.

As to Count 1 of the Indictment in 09-CR-141-S, charging a violation of Title 18, United States Code, Section 401(3): on or about September 5, 2008, the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge in the Western District of New York, issued an order setting conditions of release for Shane C. Buczek that included, among others, that the defendant shall not send any document or correspondence to the Internal Revenue Service without providing Pretrial Services with a copy of that documentation at least two business days before sending it. The defendant met with a United States

Probation Officer who explained the order and provided a copy to the defendant. On December 20, 2008, and on a number of subsequent occasions, Shane C. Buczek knowingly sent correspondence, documents and written materials to the Internal Revenue Service without providing that correspondence, documents and written materials to Pretrial Services two days in advance, in violation of the September 5, 2008, Order of Magistrate Judge Schroeder.

III. SENTENCING GUIDELINES

6. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

7. a) As to Count 3 of the Indictment in 08-CR-54-S, which charges a violation of Title 18, United States Code, Section 1028(a)(4), the government and the defendant agree that Guidelines § 2L2.2 applies to the offense of conviction and provides for a base offense level of 8.

b) As to Count 1 of the Indictment in 09-CR-141-S, charging a violation of Title 18, United States Code, Section 401(3), the government and the defendant agree that Guidelines §§ 2J1.1, and 2B1.1(b)(8)(C) apply and provide for a base offense level of 10. See, Guideline § 2J1.1, comment (n.3).

ADJUSTED OFFENSE LEVEL

8. Based on ¶¶ 7 (a) and (b) of this agreement and Guidelines § 3D1.4, it is the understanding of the government and the defendant that the defendant's combined adjusted offense level is 12.

ACCEPTANCE OF RESPONSIBILITY

9. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility), which would result in a total offense level of 10.

CRIMINAL HISTORY CATEGORY

10. It is the understanding of the government and the defendant that the defendant's criminal history category is III. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the pleas of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

11. It is the understanding of the government and the defendant that, with a total offense level of 10 and criminal history category of III, the defendant's sentencing range would be a term of imprisonment of 10 to 16 months, a fine of $2,000 to $20,000 and a period of supervised release. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the minimum and maximum penalties set forth in paragraph 1 of this agreement.

12. The government and the defendant agree to the Sentencing Guidelines calculations set forth in this agreement and neither party will advocate or recommend the application of any other Guideline, or move for any Guidelines departure, or move for or recommend a sentence outside the Guidelines, except as specifically set forth in this agreement. A breach of this paragraph by one party will relieve the other party of any agreements made in this plea agreement with respect to sentencing motions and recommendations. A breach of this paragraph by the defendant shall also relieve the government from any agreements to dismiss or not pursue additional charges.

13. The defendant understands that the Court is not bound to accept any Sentencing Guidelines calculations set forth in this

agreement and the defendant will not be entitled to withdraw the pleas of guilty based on the sentence imposed by the Court.

IV. STATUTE OF LIMITATIONS

14. In the event the defendant's pleas of guilty are withdrawn, or convictions vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to possession of a false identification document and the contempt of court, which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty pleas or vacating of the convictions becomes final.

V. GOVERNMENT RIGHTS AND RESERVATIONS

15. The defendant understands that the government has reserved the right to:

a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

c. advocate for a specific sentence within the sentencing guidelines (except as specified in paragraph 16 of this plea agreement); and

d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor.

16. The government and the defendant agree that Count 1 of the Indictment in 09-CR-141-S, which charges a violation of Title 18, United States Code, Section 401(3) (contempt of court) is not classified under the law as a felony or a misdemeanor. The government has no objection to the Court sentencing the defendant on that charge as if it were a misdemeanor offense.

17. At sentencing, the government will move to dismiss the open counts of the Indictments in 08-CR-54, and 09-CR-141.

18. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

19. The defendant understands and agrees that the Court at, the time of sentencing, may order that all monetary penalties imposed at that time (including any fine, restitution, or special assessment imposed in accordance with the terms and conditions of this plea agreement) are to be due and payable in full immediately and subject to immediate enforcement by the United States. The defendant understands and acknowledges that any schedule of payments imposed by the Court at the time of sentencing is merely a minimum schedule of payments and does not, in any way, limit those methods available to the United States to enforce the judgment.

VI. APPEAL RIGHTS

20. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence imposed by the Court which falls within or is less than

the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 11, above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence.

21. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

22. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 11, above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

VIII. TOTAL AGREEMENT AND AFFIRMATIONS

23. This plea agreement represents the total agreement between the defendant, Shane C. Buczek, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

WILLIAM J. HOCHUL, JR.
United States Attorney
Western District of New York

BY: Maura O'Donnell
MAURA K. O'DONNELL
Assistant U.S. Attorney

Dated: March 25, 2010

I have read this agreement, which consists of 12 pages. I have had a full opportunity to discuss this agreement with my attorney, Brian P. Comerford, Assistant Federal Public Defender. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

SHANE C. BUCZEK UCC 1-308
Defendant

Dated: March 25th, 2010

BRIAN P. COMERFORD, ESQ.
Attorney for the Defendant

Dated: March 25, 2010